

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEFFREY P. BARNETT,

Plaintiff(s),

v.

KILOLO KIJAKAZI,

Defendant(s).

Case No. 2:21-cv-01817-NJK

ORDER

[Docket No. 30]

Pending before the Court is an unopposed motion to award Plaintiff attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), as well as to award costs. Docket No. 30. The Commissioner takes no position on the motion. *See id.* at 6.

The Court has an independent obligation to consider the reasonableness of the amount of fees sought under the EAJA regardless of whether the request is opposed. *Douzat v. Saul*, 2020 WL 3408706, at *1 (D. Nev. June 11, 2020) (collecting cases). Fees awarded under the EAJA are determined based on the lodestar approach, except that the hourly rates are capped unless the Court in its discretion determines otherwise. *See Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir. 2012); *see also* 28 U.S.C. § 2412(d)(2)(A). Hence, a review of a fee request requires appropriate documentation to conduct the lodestar analysis, along with a showing regarding the hourly rates sought to the extent they exceed the cap imposed by Congress. *See, e.g., Douzat*, 2020 WL 3408706, at *2-4. When such information has not been provided, the fee request may be denied without prejudice so that such information can be presented to the Court in a renewed request. *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000).¹

¹ The Court in its discretion may also "simply reduce[] the fee to a reasonable amount" when it is not provided appropriate documentation. *Id.* Although the Court is providing a further opportunity to support the fee request with appropriate documentation by issuing this order, it may not do so again in the event any renewed request is not sufficiently supported.

1 The instant request leaves many questions unanswered. First, Plaintiff seeks to recover for
 2 four hours expended by David Solomonik, a legal assistant. Docket No. 30-2 at 1; Docket No. 30-
 3 3 at 7. Secretarial tasks are not recoverable because they are generally considered part of attorney
 4 overhead. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989); *Nadarajah v. Holder*, 569 F.3d
 5 906, 921 (9th Cir. 2009). Legal Assistant Solomonik performed tasks like filing documents and
 6 making notations in the file. *See* Docket No. 30-2 at 1.² No showing has been made that such
 7 time is compensable. *Cf. Douzat*, 2020 WL 3408706, at *3.³

8 Second, time expended by attorney Hal Taylor appears to be similarly clerical in nature.
 9 Docket No. 30-2 at 2. For example, Attorney Taylor seeks to recover for the time to “[d]ownload
 10 and file State Certificate,” and to “[o]pen case and file.” *Id.* No showing has been made that such
 11 time is recoverable. *Cf. Nadarajah*, 569 F.3d at 921 (identifying “filing” and “document
 12 organization” as clerical tasks).

13 Third, it is unclear why four attorneys billed on this matter. *See* Docket No. 30-2 at 1-2.
 14 Courts look with skepticism on such staffing because it can lead to duplication of effort and
 15 unnecessary expenditure of time. *E.g., Democratic Party of Wash. State v. Reed*, 388 F.3d 1281,
 16 1286 (9th Cir. 2004). For example, it is unclear whether Attorney Daley reasonably spent time to
 17 “review[] record and accept[] case for court” when Attorney Tarlock that same day also “reviewed
 18 decision and researched 9th cir. [sic] law.” Docket No. 30-2 at 1-2. It would seem that only
 19 Attorney Tarlock’s expenditure of time was necessary. Similarly, it is unclear why any time would
 20 be recoverable for Attorney Marcus, who spent less than half an hour “conferr[ing]” about
 21 “opening doc[uments]” and “review[ing] opening doc[uments].” *See* Docket No. 30-2 at 2. No
 22 explanation has been advanced as to why such duplicative work was reasonable in this case. *Cf.*

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 25 ² The motion conflates different positions and tasks, referring to paralegals, legal assistants,
 26 and law clerks interchangeably. *See* Docket No. 30 at 5. Precision is important in this context.

27 ³ Similarly, it appears that the bulk of the time spent by case manager Anjali Rathore relates
 28 to clerical matters, such as receiving, scanning, and faxing documents. *See* Docket No. 30-2 at 1.
 Even when done by a paralegal or similar professional, such time is not recoverable. *E.g.,*
Nadarajah, 569 F.3d at 921.

1 *Budge v. Saul*, 2021 WL 148993, at *2 (D. Nev. Jan. 15, 2021); *Henderson v. Saul*, No. 2:19-cv-
2 0028-NJK, Docket No. 34 (D. Nev. Oct. 9, 2020).⁴

3 In addition to the issues regarding the time expended, Plaintiff has not sufficiently
4 supported the hourly rates requested. With respect to Legal Assistant Solomonik and Case
5 Manager Rathore, no declaration or other competent evidence is submitted as to the reasonable
6 rates for such work in this District. Moreover, the motion refers to hourly rates awarded in other
7 cases, but does not actually cite to any awards from this District or any awards for Legal Assistant
8 Solomonik and Case Manager Rathore. *See* Docket No. 30 at 5.⁵

9 Similarly, a sufficient showing has not been made for the attorney rates sought in this case.
10 In the EAJA context, there is a two-step process in determining attorney rates. First, the movant
11 must show whether the hourly rate cap applies in the case or whether the Court in its discretion
12 should adjust that cap. *See, e.g., Douzat*, 2020 WL 3408706, at *3. Second, even when a showing
13 has been made for enhanced rates under the EAJA, the movant must further show that those rates
14 sought are in line with the prevailing rates in the community for similar services by lawyers of
15 reasonably comparable skill, experience, and reputation. *Nadarajah*, 569 F.3d at 916. Such
16 showings have not been made here. For example, Attorney Tarlock appears to have been
17 practicing social security law for four years, Docket No. 30-3 at 4,⁶ but no showing has been made
18 that an attorney with comparable skill, experience, and reputation would receive in this District
19 the hourly rate being sought.⁷

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21 ⁴ It may be efficient in some cases to have a junior attorney, billing at a lower rate, take the
22 laboring oar on most of the work subject to oversight by a more expensive senior attorney. *Cf. 87 S. Rothschild Liquor Mart, Inc. v. Kozubowski*, 775 F. Supp. 1129, 1131 (N.D. Ill. 1991). Such
efficiency does not exist here since Plaintiff seeks the same hourly rate for these attorneys.

23 ⁵ The only case cited does not appear to involve hourly rates in Nevada, and it involves
24 paralegal and law student intern rates. *Nadarajah*, 569 F.3d at 918. No meaningful explanation
has been advanced as to why that justifies the rates sought in this case.

25 ⁶ It is not clear when Attorney Tarlock passed the bar.

26 ⁷ Plaintiff's failure to submit evidence is particularly problematic given that it is not
27 uncommon in this District for attorneys' rates to be requested and/or set at amounts below those
being sought here. *See Wesco Ins. Co. v. Smart Indus. Corp.*, 2020 WL 3050710, at *2 (D. Nev.
28 June 8, 2020) (adopting hourly rate of \$150 for fourth-year associate work); *see also Garmong v. Lyon Cnty.*, 2019 WL 320567, *2 (D. Nev. Jan. 24, 2019) (adopting hourly rate of \$160 for partner work and \$140 for associate work); *Bartech Sys. Int'l, Inc. v. Mobile Simple Sols., Inc.*, 2017 WL

1 Accordingly, Plaintiff's application for fees and costs is **DENIED** without prejudice. Any
2 renewed request must include appropriate paperwork as to the hours worked and the rates being
3 sought, as well as meaningful discussion on the reasonableness of both. Any renewed request
4 must be filed by August 15, 2022.

5 IT IS SO ORDERED

6 Dated: August 1, 2022

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Nancy J. Koppe
United States Magistrate Judge

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26 2562104, at *2 (D. Nev. June 13, 2017) (adopting hourly rate of \$150 for associate work); *Jones*
27 *v. Nye Cnty.*, 2016 WL 7441068, at *3 (D. Nev. Dec. 27, 2016) (adopting hourly rate of \$150 for
28 partner work and \$125 for associate work); *Am. Contractors Indem. Co. v. Emerald Assets L.P.*,
2016 WL 4591767, at *5 (D. Nev. Sept. 2, 2016) (adopting hourly rate of \$125 for associate work);
Home Gambling Network, Inc. v. Piche, 2015 WL 1734928, at *10-11 (D. Nev. Apr. 16, 2015) (in
relatively complex patent case, adopting requested hourly rate of \$95 for work done by "[n]ewly
licensed attorney").